



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8, MONTANA OFFICE
FEDERAL BUILDING, 10 W. 15th STREET, SUITE 3200
HELENA, MONTANA 59626

September 29, 2003

Ref: 8MO

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Charles and June Johnson
Timberlane Resort
1 2nd Avenue E, #C
Polson, MT 59860

Re: Administrative Order
Docket No. **SDWA-08-2003-0069**
Timberlane Resort
PWS ID #MT0003221

Dear Mr. and Mrs. Johnson:

Enclosed you will find an Administrative Order (Order), which the Environmental Protection Agency (EPA) has issued under the authority of the Safe Drinking Water Act (SDWA), 42 U.S.C. Section 300f et seq., and its implementing regulations. Among other things, the Administrative Order finds that Timberlane Resort is a public water supplier as defined by the SDWA and that you have violated the National Primary Drinking Water Regulations (NPDWRs) at 40 C.F.R. §§ 141.23(d), 141.31(b), and 141.32 for: failure to monitor for nitrates; failure to notify the State of a violation; and failure to provide public notice of the violations, respectively.

If you comply with the enclosed Order for a period of at least twelve months, EPA may choose to close the Order. Violating the enclosed Order may lead to (1) a penalty of up to \$27,500 per day of violation of the Order, (2) a separate such penalty for violating the regulations themselves, and/or (3) a court injunction ordering you to comply.

Also enclosed is a Small Business Regulatory Enforcement and Fairness Act (SBREFA) Section 22 information sheet. The SBREFA sheet notifies small businesses of their right to comment on regulatory enforcement activities, and provides information on compliance assistance. Dissemination of this information sheet does not constitute an admission or determination by EPA that the business, organization or governmental jurisdiction is a small entity as defined by SBREFA.



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Please note that the effective date of the enclosed Order is the date of issuance. Within the next 10 days, please provide EPA with any new information that you believe the Agency is not aware of relating to the alleged violations in the Order. The information can be sent to Eric Finke at the address on the letterhead, or you may call Mr. Finke at (800) 457-2690 or (406) 457-5026. If you wish to have an informal conference with EPA, you may also call or write Mr. Finke. If you are represented by an attorney or have legal questions, please call Michelle Jalazo at (800) 227-8917 or (303) 312-6921.

I urge your prompt attention to this matter.

Sincerely,

SIGNED

John F. Wardell, Director
EPA Montana Office

Enclosures

Order w/ sample bottle labels
SBREFA notice
Public Notice template

cc: Jan Sensibaugh, MDEQ

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF)	
)	
Timberlane Resort)	
Polson, Montana)	
PWS ID# MT0003221)	
)	
Respondent)	
)	ADMINISTRATIVE ORDER
Proceedings under section 1414(g))	
of the Safe Drinking Water Act,)	
42 U.S.C. § 300g-3(g))	Docket No. SDWA-08-2003-0069
)	

The following Findings are made and Order issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by section 1414(g) of the Safe Drinking Water Act (the Act), 42 U.S.C. § 300g-3(g) and its implementing regulations, as properly delegated to the Supervisors of the Legal Enforcement Program of the Office of Enforcement, Compliance and Environmental Justice and the EPA Montana Office, EPA Region 8.

FINDINGS

1. The Timberlane Resort ("Respondent") is a company and therefore a "person" within the meaning of 40 C.F.R. § 141.2.
2. Respondent owns and/or operates the Timberlane Resort Water System (the "System"), located in Lake County, Montana for the provision of water to the public for human consumption.
3. According to records maintained by the Montana Department of Environmental Quality (MDEQ), the Timberlane Resort System has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least

60 days out of the year and is therefore a "public water system" within the meaning of section 1401(4) of the Act, 42 U.S.C. § 300f(4), and a "non-community water system" within the meaning of 40 C.F.R. § 141.2.

4. Respondent owns and/or operates a public water system and is therefore a "supplier of water" within the meaning of section 1401(5) of the Act, 42 U.S.C. § 300f(5) and 40 C.F.R. § 141.2. Respondent is therefore subject to the requirements of part B of the Act, 42 U.S.C. § 300g, and its implementing regulations, 40 C.F.R. part 141.
5. According to a June 2003 sanitary survey by Lake County, the System is supplied solely by a groundwater source consisting of one well and which serves approximately 29 persons daily.

FINDINGS OF VIOLATION

I. Failure to monitor for nitrate

- A. 40 C.F.R. § 141.23(d) requires public water systems to monitor their water annually for nitrate to determine compliance with the nitrate maximum containment level ("MCL") as stated in 40 C.F.R. § 141.62.
- B. Respondent failed to monitor for nitrate in calendar years 2000 and 2001, in violation of 40 C.F.R. § 141.23(d).

II. Failure to provide public notice of a violation

- A. 40 C.F.R. § 141.32 requires the owner or operator of a public water system to notify the public of any National Primary Drinking Water Regulation ("NPDWRs") monitoring violation. Such notifications must be performed in the manner provided in 40 C.F.R. § 141.32 prior to May 6,

2002, and in the manner provided in 40 C.F.R. part 141 subpart Q on or after May 6, 2002.

- B. 40 C.F.R. § 141.201 requires owners and/or operators of public water systems to notify the public of any violation of the NPDWRs, including monitoring requirements.
- C. Respondent has not provided public notice of the noncompliance detailed in the preceding Section I, in violation of 40 C.F.R. §§ 141.32 and 141.201.

II. Failure to report a violation to EPA

- A. 40 C.F.R. § 141.31(b) requires public water systems to report any failure to comply with any NPDWR to EPA within 48 hours.
- B. Respondent failed to report to EPA instances of noncompliance detailed in Sections I and II above, in violation of 40 C.F.R. § 141.31(b).

ORDER

Based on the foregoing Findings, and pursuant to section 1414(g) of the Act, IT IS ORDERED:

1. Within 30 days of the date of this Order, Respondent shall comply with the nitrate monitoring requirements as stated in 40 C.F.R. § 141.23(d) to determine compliance with the nitrate MCL appearing at 40 C.F.R. § 141.62(b).
Respondent shall use the sample bottle labels accompanying this Order.
Respondent shall report analytical results to EPA within the first 10 days following the month in which sample results are received, as required by 40 C.F.R. § 141.31(a).

2. If Respondent has already monitored for nitrate for calendar year 2003, Respondent need not resample but Respondent shall send a copy of the 2003 analytical results to EPA at the address in paragraph 6 within 10 calendar days of the effective date of this Order.
3. No later than 30 days from the effective date of this Order, Respondent shall return to compliance with 40 C.F.R. §§ 141.32, 141.201, 141.204 and 141.205 by providing public notice of the violations specified under the Findings of Violation in this Order. This notice shall be given by (1) posting the notice in conspicuous locations throughout the distribution system frequented by persons served by the System OR (2) by mail or direct delivery to each customer and service connection; AND (3) any other method reasonably calculated to reach other persons served by the System if they would not normally be reached by the notice required above, such as publication in a local newspaper or newsletter distributed to customers; use of E-mail to notify employees or students; or delivery of multiple copies in central locations. If the public notice is posted, the notice must remain in place for as long as the violation or situation persists, but for no less than seven days. The public water system must repeat the notice every three months as long as the violation or situation persists. Upon the effective date of this Order, Respondent shall comply with the publication notification requirements at 40 C.F.R. § 141.201 et seq. following any future NPDWR violation. Respondent shall submit a copy of the public notice to EPA and MDEQ within 10 days of completion of the public notice, including a certification that Respondent has fully complied with the public notice

regulations, as required by 40 C.F.R. § 141.31(d).

4. Upon the effective date of this Order, Respondent shall comply with 40 C.F.R. § 141.31(b) by reporting any failure to comply with any NPDWR to MDEQ and EPA within 48 hours.
5. Documents, certifications, analytical results, and public notices required by this Order shall be sent by certified mail to:

Eric Finke
EPA Montana Office
10 West 15th Street, Suite 3200
Helena, MT 59626

GENERAL PROVISIONS

1. This Order does not constitute a waiver, suspension, or modification of the requirements of 40 C.F.R. § 141.1 et seq., or the Safe Drinking Water Act, which remain in full force and effect. Issuance of this Order is not an election by EPA to forgo any civil or criminal action otherwise authorized under the Act.
2. Violation of any term of this Order instituted under section 1414(g)(3)(A) of the Act, 42 U.S.C. § 300g-3(g)(3)(A), may subject the Respondent to an administrative civil penalty of up to \$25,000 per day of violation under section 1414(g)(3)(B) of the Act, 42 U.S.C. § 300g-3(g)(3)(B), or a civil penalty of not more than \$27,500 per day of violation assessed by an appropriate U.S. District Court under section 1414(g)(3)(C) of the Act, 42 U.S.C. § 300g-3(g)(3)(C).
3. Violation of any requirement of the SDWA or its implementing regulations may subject Respondent to a civil penalty of not more than \$27,500 per day of violation assessed by an appropriate U.S. District Court under section 1414(b) of

the Act, 42 U.S.C. § 300g-3(b).

4. The effective date of this Order shall be the date of issuance of this Order.

Issued this 29TH day of Sept., 2003.

David J. Janik

Michael T. Risner, Director
David J. Janik, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

SIGNED

John F. Wardell, Director
EPA Montana Office

**IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE
REGIONAL HEARING CLERK.**

THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON SEPTEMBER 29, 2003.